

RESOLUTION NO. 16-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD15-0007, CONDITIONAL USE PERMIT NO. UP16-0001 AND MINOR CONDITIONAL USE PERMIT NO. MC15-0012, TO ALLOW FOR THE EXPANSION OF AN EXISTING ATHLETIC CLUB INTO SECOND STORY AND TO ALLOW FOR A LEARNING CENTER AT THE GROUND FLOOR, LOCATED AT 1818 CLEAR LAKE AVENUE, MILPITAS, CA 95035

WHEREAS, on August 4, 2015, an application was submitted by Yorke Lee to construct a 13,129 square foot second story addition to an existing single-story athletic club. The project proposes to remodel approximately 8,000 square feet of the first floor to accommodate a new after school facility at 1818 Clear Lake Avenue, Milpitas, CA 95035 (“Project”). The property is located within the Commercial General (C2) Zoning District (APN: 088-43-026); and

WHEREAS, the Planning Division completed an environmental assessment for the Project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this Project is exempt under CEQA Guidelines Section 15332 (Infill Development Project); and

WHEREAS, on March 9, 2016, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The Planning Commission finds the proposed Project is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) Guideline Section 15332 (Infill Development Project) because the proposed Project meets the conditions described in that Section based on the Findings of Approval and subject to the Conditions of Approval attached hereto and incorporated herein. As further described in the staff report and in this Resolution:

- a) The proposed Project is consistent with the applicable General Plan Designation and all applicable general plan policies as well as with applicable Zoning Designation and regulations.
- b) The proposed development occurs within City limits on a Project site of 1.3 acres; thus less than five acres, and is substantially surrounded by urban uses.
- c) The Project site has no value as habitat for endangered, rare or threatened species.

- d) Approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The City’s Utility Engineering Section has determined that the site can be adequately served by all required utilities and public services.

Section 3: Site Development Permit (Section XI-10-57-03(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Site Development Permit No. SD15-0007:

- a) *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

The proposed layout of the site and design of the building makes use of the existing facility and will not expand the building footprint so as to cause impact to adjoining commercial uses and neighbors. The expansion of the facility will add 385 square feet to the ground floor and create a total height of 33 feet, which is 5 feet taller than the existing building. The expansion of the athletic facility will be architecturally compatible with the existing building and the surrounding buildings, which are primarily one and two story offices and retail spaces. Based on the foregoing, the proposed project is aesthetically harmonious with adjacent and surrounding development.

- b) *The project is consistent with the Milpitas Zoning Ordinance.*

Development Standards

As discussed in detail in the Staff Report and herein, the project conforms to the development standards as required in the Commercial General (C2) and Site and Architectural (-S) Overlay Districts. The table below demonstrates how the Project is consistent with these development standards.

Table 1: Summary of Development Standards

	Required	Proposed	Complies
<u>Setbacks (Minimum)</u>			
Front Setback	0'	No change	Yes
Side Setback	0'; 15 when abutting residential	No change	Yes
Rear Setback	0' 15 when abutting residential	No change	Yes
Building Height	None	33'	Yes
Floor Area Ratio	.50	.66	
Landscaping	None	No change	Yes

Parking

The Project requires a total of 143 parking spaces based on the table below:

Table 2: Summary of Parking Standards

Use	Sq. Ft./No. Class Rooms	Parking Ratio	Required Parking
Athletic Facility	20,233 (Net)	1 parking space per 150 s.f	135 spaces
Classrooms	8	1 parking space per classroom	8 Spaces
Total number of parking spaces required			143 Spaces
Total number of parking spaces provided			152 Spaces

c) The project is consistent with the Milpitas General Plan.

The project is consistent with the General Plan Designation of Commercial General (GNC) because it provides commercial services for personal and business services accessed primarily by the automobile in a shopping center. The project is also consistent with the implementing policies of the General Plan Land Use Element because it is an infill development and provides a wide range of retail sales and services.

Section 4: Conditional Use Permit (Section XI-10-2.03) – The Planning Commission makes the following findings based on evidence in the public record in support of Conditional Use Permit No. UP16-0001 relating to increased Floor Area Ratio:

a) The proposed development will generate low peak-hour traffic.

The project is proposing an increase in the Floor Area Ratio (F.A.R.) from 0.42 to 0.66. The project is consistent with this finding because based on the City’s Traffic Engineer’s assessment and reviewing the standards set by the Institute of Transportation Engineers (ITE), the proposed project will not generate more than one hundred peak hour trips. A peak hour trip is defined as the one-hour period of time with the highest volume of traffic. The peak hour trips generated by the athletic club facility is lower than the surrounding existing industrial uses and the peak hour trips generated fall in line with the Commercial General zoning designation.

b) The proposed development will not create a dominating visual prominence.

The front of the athletic club will remain as existing. The expansion of the building occurs to the rear of the building where the building is not as visible from the public street frontage. Although the proposed project is approximately thirty-three feet (33’) in height, the project is compatible in massing, detail, materials, and colors with the existing building.

Section 5: Minor Conditional Use Permit (Section XI-10-57.04-1(F)) - The Planning Commission makes the following findings based on the evidence in the public record in support of Minor Conditional Use Permit No. MC15-0012:

- a) *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The proposed educational learning center will serve the community, and, as proposed, have no detrimental or injurious impacts on the property or improvements in the vicinity of the property. The operation of the educational facility will be in compliance with all local, state, and federal regulations.

Section 8: The Planning Commission of the City of Milpitas hereby adopts **Resolution No. 16-004 recommending approval of Site Development Permit No. SD15-0007, Conditional Use Permit No. UP16-0001 and Minor Conditional Use Permit No. MC15-0012 based on the above Findings and subject to the Conditions of Approval attached hereto as Exhibit 1 incorporated herein.**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on March 9, 2016.

_____ Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on March 9, 2016 and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Sudhir Mandal				
Lawrence Ciardella				
Hon Lien				
Rajeev Madnawat				
Ray Maglalang				

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Zeya Mohsin (Alternate)				
Demetress Morris				
Gurdev Sandhu				

EXHIBIT 1

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS APPROVING SITE DEVELOPMENT PERMIT NO. SD15-0007, CONDITIONAL USE PERMIT NO. UP-16-0001 AND MINOR CONDITIONAL USE PERMIT NO. MC15-0012, TO ALLOW FOR THE EXPANSION OF AN EXISTING ATHLETIC CLUB INTO SECOND STORY AND TO ALLOW FOR A LEARNING CENTER AT THE GROUND FLOOR, LOCATED AT 1818 CLEAR LAKE AVENUE, MILPITAS, CA 95035

General Conditions

1. General Compliance. The applicant and owner, including all successors in interest (collectively “Permittee”) shall comply with each and every condition set forth in this Permit. This Site Development Permit No. SD15-0007, Conditional Use Permit No. UP16-0001, and Minor Conditional Use Permit MC15-0012 (collectively “Permit”) shall have no force or effect and no building permit shall be issued unless and until all things required by the below-enumerated precedent conditions have been performed or caused to be performed and this Resolution has been recorded by the Permittee with the Santa Clara County’s Recorder Office and a copy shall be provided to the Planning Division.
2. Effective Date. Unless there is a timely appeal filed in accordance with the Milpitas Zoning Code, the date of approval of this Permit is the date on which the decision-making body approved this Permit.
3. Acceptance of Permit. Should Permittee fail to file a timely appeal within twelve (12) calendar days of the date of approval of this Permit, inaction by Permittee shall be deemed to constitute each of the following:
 - a. Acceptance of this Permit by Permittee; and
 - b. Agreement by the Permittee to be bound by, comply with, and to do all things required of or by Permittee pursuant to all of the terms, obligations, and conditions of this Permit.
4. Permit Expiration. Pursuant to Section XI-10-64-06 of the Milpitas Zoning Code, this Permit shall become null and void if the activity permitted by this Permit is not commenced within two (2) years from the date of approval, or for a project submitted with a tentative map, within the time limits of the approved tentative map. Pursuant to Section XI-10-64.06(B) of the Milpitas Zoning Code, an activity permitted by this Permit shall be deemed to have commenced when the project:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

5. Time Extension. Pursuant to Section XI-10-64.07 of the Milpitas Zoning Code, unless otherwise provided by State law, Permittee shall have the right to request a one-time extension of the Permit if the request is made in writing to the Planning Division prior to the expiration date of the approval. **(P)**
6. Project Job Account. If Permittee's project job account is at any time delinquent or below the required deposit amount, City will not continue to review or process the application until Permittee's private job account is paid in full and the required deposit has been made. Additionally, prior to the issuance of any building permit or occupancy permit, as applicable, Permittee shall pay in full the project account balance and establish a remaining balance of at least twenty-five percent (25%) of the required initial deposit.
7. Notice. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Permittee that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1).
8. Cost and Approval. Permittee shall fully complete and satisfy each and every condition set forth in this Resolution and any other condition applicable to the project to the sole satisfaction of the City. Additionally, Permittee shall be solely responsible and liable for the cost to satisfy each and every condition. Permittee shall pay all required fees and charges to the City at the rate in effect at time of building permit issuance, or, the rate in effect when the fees and charges are due and paid in full to the City. There is no vesting of any fees or charges with the adoption of this Resolution.
9. Conditions. Each and every condition set forth in this Exhibit shall apply to the project and continue to apply to the project so long as the Permittee is operating the project under the permits and approvals in this Resolution.
10. Compliance with Laws. The construction, use, and all related activity authorized under this Permit shall comply with all applicable local, state, and federal laws, rules, regulations, guidelines, requirements, and policies. **(CA/P)**
11. Previous Approvals. Permittee shall abide and continue to comply with all previous City approvals, permits, or requirements relating to the subject property, unless explicitly superseded or revised by this Permit.
12. Indemnification. To the fullest extent permitted by law, Permittee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to (i) City's approval of the project, including but

not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act, and (ii) Permittee's construction, operation, use, or related activity under this Permit. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Permittee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Permittee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition.

13. Revocation, Suspension, Modification. This Permit may be suspended, revoked, or modified in accordance with Section XI-10-63.06 of the Milpitas Zoning Code.
14. Severability. If any term, provision, or condition of this Permit is held to be illegal or unenforceable by the Court, such term, provision, or condition shall be severed and shall be inoperative, and the remainder of this Permit shall remain operative, binding, and fully enforceable.
15. Permittee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on March 9, 2016 in accordance with these Conditions of Approval.

Any deviation from the approved site plan, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the Permittee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission or City Council, as applicable, in accordance with the Milpitas Zoning Code. **(P)**

16. Written Response to Conditions. The Permittee shall provide a written response to the Conditions of Approval indicating how each condition has been addressed with the building permit application submittal. **(ALL)**

Project Specific Conditions

Site Development Permit

17. Trash Enclosure. Trash enclosure shall match the proposed building exterior finish. All materials, colors, and finishes shall be subject to Planning Director's approval prior to submittal for any building permit. **(P)**

18. Equipment Screening. All rooftop equipment shall be adequately screened from the parking lot areas and the public street. All ground mounted equipment shall be adequately screened, if feasible, and subject to the Planning Division review and approval. If the screening is proven infeasible as solely determined by Planning Director, then all ground mounted equipment and surrounding bollards (if any) shall be of design and color that will minimize visual impact. **(P)**
19. Staggered Pick-up and Drop-off Schedule. The Permittee shall have a staggered pick-up and drop-off schedule to prevent adverse traffic conditions on site. Any changes to the staggered pick-up or drop-off schedule shall require the approval of the Planning Director or Designee in writing. **(P/E)**
20. Signage. Signage shall not be part of this approval and shall be applied for under a separate City permit or approval. All proposed signage shall also be subject to Traffic Engineering review and approval. **(P)**
21. Landscaping. All approved landscaping shall be permanently maintained and replaced like-for-like or substantially similar plant material as necessary to provide a permanent, attractive and effective appearance. **(P)**

FEES

22. Development Fees: Permittee shall submit the following items with the building permit application and pay the related estimated fees prior to building permit issuance:
 - a. The project is subject to the Calaveras Boulevard widening impact fee due to the building addition. The fees are \$827.36 per 1,000 square feet of building addition.

Contact the Land Development Section of the Engineering Division at (408) 586-3328 to obtain the form(s). There is no vesting of the fees with the adoption of this Resolution. **(E)**

23. Building Permit Automation Fee: Prior to any building permit issuance, Permittee shall pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee schedule adopted by the City Council, including but not limited to, connection fees (water, sewer and storm), Transit Area impact fee, plan check and inspection deposit, and 2.5% building permit automation fee as approved by City Council Resolution No. 7590. **(E)**

ENGINEERING

24. Permittee and its agents shall perform all elements of the best management practices for compliance with the requirements of the National Pollution Elimination Discharge System Permit as regulated by the San Francisco Bay Regional Water Quality Control Board. Permittee is responsible for the compliance. **(E)**
25. Permittee and its agents are responsible for approvals/permits from other agencies, property owners, and utility company. **(E)**
26. Direct all downspout to the landscaped areas. Discharge into the street or City storm system is not permitted. **(E)**

UTILITIES

27. Water Supply and Force Majeure: The City currently has adequate water supply and sewerage treatment plant capacity allocation for this land development project. The City reserves the right to suspend the issuance of building permits to implement this land use development, if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. Although vesting tentative maps have been approved for each subarea within the Site Development Permit which provides vested rights as defined in Government Code Section 66498.1, no vested right to the issuance of a Building Permit is acquired by the approval of this land development in the event the City's ability to deliver water and sewer treatment is affected by force majeure pursuant to the criteria set forth above. This condition of approval applies in case of an emergency declaration of water supply assurance in the case of a major catastrophic event that restricts City's assurance to provide water supply, or allocated treatment plant capacity. Pursuant to Government Code Section 66452.6, in the event the issuance of building permits is suspended due to lack of available water supplies, the period of time set forth as the term for the vesting tentative map in Government Code Section 66452.6(a)(1) shall be tolled for up to five years until said suspension is terminated. **(E)**
28. Per Chapter 200, Title V, Solid Waste Management, V-200-3.10, *General Requirement*, Permittee shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Trimmings Collection Services*, Permittee shall subscribe to and pay for solid waste services rendered. **(E)**

Prior to any building permit issuance, Permittee shall incorporate following solid waste services requirements to the satisfaction of the City Engineer:

- a. Proposed solid waste enclosure shall be designed per the Development Guidelines for Solid Waste Services to house all necessary equipment. The access to the location and size of the enclosure shall be designed to the City Engineer's satisfaction and shown on the plans prior to building permit issuance. The enclosure drains must discharge to the sanitary sewer line. Storm drain inlets must be located at least 25 feet away from enclosures to prevent accidental spills from entering storm drains. Enclosures are not permitted within public utility easements.
- b. The Permittee shall be responsible for solid waste management, including transfer of material to the collection area. Prior to building permit issuance, Permittee shall submit to the City (for review and approval) a written Solid Waste Handling Plan including detailed step-by-step instructions to manage solid waste from generation to disposal. The Plan shall state how the residential waste will be conveyed to the collection area for disposal. Show the path of travel for refuse. Demonstrate how recycling shall have a separately maintained process from garbage handling.
- c. Prior to certificate of occupancy issuance, the Permittee shall provide evidence to the City that a sufficient level of trash and recycling service has been secured using a Service Agreement with Republic Services. After the Permittee has full occupancy, the Permittee

shall contact the Republic Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the Permittee shall increase the service to the level determined by the evaluation. (E)

(P) = Planning

(B) = Building

(E) = Engineering

(F) = Fire Prevention

(CA) = City Attorney

(PD) = Police Department